

areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed locations of such highway. Such certification shall be accompanied by a report which indicates the consideration given to the economic, social, environmental and other effects of the plan or highway location or design and various alternatives which were raised during the hearing or which were otherwise considered.

(b) When hearings have been held under subsection (a), the State highway department shall submit a copy of the transcript of said hearings to the Secretary, together with the certification and report.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 902; Pub. L. 90-495, § 24, Aug. 23, 1968, 82 Stat. 828; Pub. L. 91-605, title I, § 135, Dec. 31, 1970, 84 Stat. 1734.)

#### AMENDMENTS

1970—Subsec. (a). Pub. L. 91-605, § 135(a), provided for submission of a report by the State highway department involved indicating consideration given to economic, social, environmental, and other effects of the plan or highway location or design plus the various alternatives which were considered.

Subsec. (b). Pub. L. 91-605, § 135(b), inserted reference to report to be submitted by the State highway department together with the certification of public hearings.

1968—Subsec. (a). Pub. L. 90-495 inserted social effect of projects, the impact on environment, and their consistency with the goals and objectives of such urban planning as has been promulgated by the community to the list of factors to be considered by State highway departments in looking over projects involving the bypassing or passing through of municipalities.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

### § 129. Toll roads, bridges, tunnels, and ferries

#### (a) BASIC PROGRAM.—

(1) AUTHORIZATION FOR FEDERAL PARTICIPATION.—Notwithstanding section 301 of this title and subject to the provisions of this section, the Secretary shall permit Federal participation in—

(A) initial construction of a toll highway, bridge, or tunnel (other than a highway, bridge, or tunnel on the Interstate System) or approach thereto;

(B) reconstructing, resurfacing, restoring, and rehabilitating a toll highway, bridge, or tunnel (including a toll highway, bridge, or tunnel subject to an agreement entered into under this section or section 119(e) as in effect on the day before the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991) or approach thereto;

(C) reconstruction or replacement of a toll-free bridge or tunnel and conversion of the bridge or tunnel to a toll facility;

(D) reconstruction of a toll-free Federal-aid highway (other than a highway on the Interstate System) and conversion of the highway to a toll facility; and

(E) preliminary studies to determine the feasibility of a toll facility for which Federal participation is authorized under subparagraph (A), (B), (C), or (D);

on the same basis and in the same manner as in the construction of free highways under this chapter.

(2) OWNERSHIP.—Each highway, bridge, tunnel, or approach thereto constructed under this subsection must—

(A) be publicly owned, or

(B) be privately owned if the public authority having jurisdiction over the highway, bridge, tunnel, or approach has entered into a contract with a private person or persons to design, finance, construct, and operate the facility and the public authority will be responsible for complying with all applicable requirements of this title with respect to the facility.

(3) LIMITATIONS ON USE OF REVENUES.—Before the Secretary may permit Federal participation under this subsection in construction of a highway, bridge, or tunnel located in a State, the public authority (including the State transportation department) having jurisdiction over the highway, bridge, or tunnel must enter into an agreement with the Secretary which provides that all toll revenues received from operation of the toll facility will be used first for debt service, for reasonable return on investment of any private person financing the project, and for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation. If the State certifies annually that the tolled facility is being adequately maintained, the State may use any toll revenues in excess of amounts required under the preceding sentence for any purpose for which Federal funds may be obligated by a State under this title.

(4) SPECIAL RULE FOR FUNDING.—In the case of a toll highway, bridge, or tunnel under the jurisdiction of a public authority of a State (other than the State transportation department), upon request of the State transportation department and subject to such terms and conditions as such department and public authority may agree, the Secretary shall reimburse such public authority for the Federal share of the costs of construction of the project carried out on the toll facility under this subsection in the same manner and to the same extent as such department would be reimbursed if such project was being carried out by such department. The reimbursement of funds under this paragraph shall be from sums apportioned to the State under this chapter and available for obligations on projects on the Federal-aid system in such State on which the project is being carried out.

(5) LIMITATION ON FEDERAL SHARE.—The Federal share payable for a project described in paragraph (1) shall be a percentage determined by the State but not to exceed 80 percent.

(6) MODIFICATIONS.—If a public authority (including a State transportation department) having jurisdiction over a toll highway, bridge, or tunnel subject to an agreement under this section or section 119(e), as in effect on the day before the effective date of title I of the Intermodal Surface Transportation Efficiency Act of 1991, requests modification of such agreement, the Secretary shall modify

such agreement to allow the continuation of tolls in accordance with paragraph (3) without repayment of Federal funds.

(7) LOANS.—

(A) IN GENERAL.—A State may loan to a public or private entity constructing or proposing to construct under this section a toll facility or non-toll facility with a dedicated revenue source an amount equal to all or part of the Federal share of the cost of the project if the project has a revenue source specifically dedicated to it. Dedicated revenue sources for non-toll facilities include excise taxes, sales taxes, motor vehicle use fees, tax on real property, tax increment financing, and such other dedicated revenue sources as the Secretary determines appropriate.

(B) COMPLIANCE WITH FEDERAL LAWS.—As a condition of receiving a loan under this paragraph, the public or private entity that receives the loan shall ensure that the project will be carried out in accordance with this title and any other applicable Federal law, including any applicable provision of a Federal environmental law.

(C) SUBORDINATION OF DEBT.—The amount of any loan received for a project under this paragraph may be subordinated to any other debt financing for the project.

(D) OBLIGATION OF FUNDS LOANED.—Funds loaned under this paragraph may only be obligated for projects under this paragraph.

(E) REPAYMENT.—The repayment of a loan made under this paragraph shall commence not later than 5 years after date on which the facility that is the subject of the loan is open to traffic.

(F) TERM OF LOAN.—The term of a loan made under this paragraph shall not exceed 30 years from the date on which the loan funds are obligated.

(G) INTEREST.—A loan made under this paragraph shall bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible.

(H) REUSE OF FUNDS.—Amounts repaid to a State from a loan made under this paragraph may be obligated—

(i) for any purpose for which the loan funds were available under this title; and

(ii) for the purchase of insurance or for use as a capital reserve for other forms of credit enhancement for project debt in order to improve credit market access or to lower interest rates for projects eligible for assistance under this title.

(I) GUIDELINES.—The Secretary shall establish procedures and guidelines for making loans under this paragraph.

(8) INITIAL CONSTRUCTION DEFINED.—For purposes of this subsection, the term “initial construction” means the construction of a highway, bridge, or tunnel at any time before it is open to traffic and does not include any improvement to a highway, bridge, or tunnel after it is open to traffic.

(b) Notwithstanding the provisions of section 301 of this title, the Secretary may permit Fed-

eral participation under this title in the construction of a project constituting an approach to a ferry, whether toll or free, the route of which has been classified as a public road and has not been designated as a route on the Interstate System. Such ferry may be either publicly or privately owned and operated, but the operating authority and the amount of fares charged for passage shall be under the control of a State agency or official, and all revenues derived from publicly owned or operated ferries shall be applied to payment of the cost of construction or acquisition thereof, including debt service, and to actual and necessary costs of operation, maintenance, repair, and replacement.

(c) Notwithstanding section 301 of this title, the Secretary may permit Federal participation under this title in the construction of ferry boats and ferry terminal facilities, whether toll or free, subject to the following conditions:

(1) It is not feasible to build a bridge, tunnel, combination thereof, or other normal highway structure in lieu of the use of such ferry.

(2) The operation of the ferry shall be on a route classified as a public road within the State and which has not been designated as a route on the Interstate System. Projects under this subsection may be eligible for both ferry boats carrying cars and passengers and ferry boats carrying passengers only.

(3) Such ferry boat or ferry terminal facility shall be publicly owned.

(4) The operating authority and the amount of fares charged for passage on such ferry shall be under the control of the State or other public entity, and all revenues derived therefrom shall be applied to actual and necessary costs of operation, maintenance, and<sup>1</sup> repair, debt service, negotiated management fees, and, in the case of a privately operated toll ferry, for a reasonable rate of return.

(5) Such ferry may be operated only within the State (including the islands which comprise the State of Hawaii and the islands which comprise the Commonwealth of Puerto Rico) or between adjoining States or between a point in a State and a point in the Dominion of Canada. Except with respect to operations between the islands which comprise the State of Hawaii, operations between the islands which comprise the Commonwealth of Puerto Rico, operations between a point in a State and a point in the Dominion of Canada, and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of such ferry operation shall be in any foreign or international waters.

(6) No such ferry shall be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from such a disposition shall be credited to the unprogrammed balance of Federal-aid highway funds of the same class last apportioned to such State. Any amount so credited shall be in addition to all other funds then apportioned to such State and available for expenditure in accordance with the provisions of this title.

<sup>1</sup> So in original. The word “and” probably should not appear.

## (d) PILOT PROGRAM.—

(1) AUTHORIZATION FOR FEDERAL PARTICIPATION.—Subject to the provisions of this subsection, the Secretary shall establish a pilot program which permits Federal participation in 9 toll facilities on the same basis and in the same manner as in the construction of free highways under this chapter.

(2) LIMITATION ON TYPES OF FACILITIES.—The Secretary may only permit Federal participation under this subsection in the following type of facilities:

(A) The construction of a new toll highway, bridge, or tunnel (other than a highway on the Interstate System).

(B) The reconstruction of an existing highway, bridge, or tunnel to expand its capacity (other than a highway, bridge, or tunnel on the Interstate System).

(3) LIMITATION ON NUMBER OF FACILITIES.—The Secretary may only permit Federal participation under this subsection in 9 facilities. One of such facilities shall be carried out in each of the following: Orange County, California, the State of Texas, the States of Pennsylvania and West Virginia, the State of Florida, States<sup>2</sup> of Georgia and West Virginia, and the State of South Carolina. The locations of the other 2 facilities shall be at the discretion of the Secretary; except that not more than 2 facilities carried out under this subsection may be located in a State. The Governor of the States of Pennsylvania and West Virginia shall select the facility to be carried out in such State. The toll facility in Orange County, California, may be located in more than 1 highway corridor to relieve congestion on existing interstate routes in such County.

(4) LIMITATION ON FEDERAL SHARE.—Notwithstanding any other provision of law, the Federal share payable for the construction or reconstruction of a toll highway, bridge, or tunnel under this subsection shall not exceed 35 percent.

(5) PUBLIC OWNERSHIP REQUIREMENT.—Each highway, bridge, tunnel, or approach thereto under this subsection must be publicly owned and operated; except that, under this subsection, Federal funds may participate in the approaches to a toll highway, toll bridge, or toll tunnel whether the highway, bridge, or tunnel is to be or has been constructed by a State or other public authority.

(6) LIMITATIONS ON USE OF REVENUES.—Before the Secretary may permit Federal participation under this subsection in a State, the State highway department (and, in the case of the State of Texas, the Texas Turnpike Authority) must enter into an agreement with the Secretary which provides that all toll revenues received from operation of the tolled facility constructed or reconstructed under this subsection will be used only on the tolled facility, and only for construction or reconstruction costs, or for the costs necessary for the proper operation, maintenance, and debt service of the tolled facility, including resurfacing, reconstruction, rehabilitation, and restoration.

(7) LIMITATION ON FEDERAL PARTICIPATION TO ORIGINAL CONSTRUCTION.—Except for reconstruction to expand capacity, toll facilities may receive Federal participation under this chapter only once for the original construction or reconstruction of the facility.

(8) EFFECT ON APPORTIONMENT.—Toll mileage constructed or reconstructed under this subsection shall not be used to increase a State's apportionment under any apportionment formula.

(9) NEW TOLL HIGHWAY DEFINED.—For purposes of this subsection, the term "new toll highway, bridge, or tunnel" shall mean initial construction of a highway, bridge, or tunnel on a new location at any time before it is open to traffic and shall not include any improvements to a toll highway, bridge, or tunnel after it is open to traffic.

(10) SPECIAL RULE FOR FUNDING OF TEXAS PROJECT.—Upon request of the Texas Department of Highways and Public Transportation and subject to such terms and conditions as such Department and the Texas Turnpike Authority may agree, the Secretary shall reimburse the Texas Turnpike Authority for the Federal share of the costs of construction of the project carried out in the State of Texas under this subsection in the same manner and to the same extent as such Department would be reimbursed if such project was being carried out by such Department. The reimbursement of funds under this paragraph shall be from sums apportioned to the State of Texas under this chapter and available for obligation on projects on the Federal-aid primary system in such State.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 902; Pub. L. 86-657, §§5, 8(a), July 14, 1960, 74 Stat. 523, 524; Pub. L. 90-495, §28, Aug. 23, 1968, 82 Stat. 829; Pub. L. 91-605, title I, §§133, 139, Dec. 31, 1970, 84 Stat. 1732, 1736; Pub. L. 92-434, §7, Sept. 26, 1972, 86 Stat. 732; Pub. L. 93-87, title I, §§118, 132, 139, Aug. 13, 1973, 87 Stat. 259, 267, 270; Pub. L. 93-643, §108, Jan. 4, 1975, 88 Stat. 2284; Pub. L. 94-280, title I, §121, May 5, 1976, 90 Stat. 438; Pub. L. 95-599, title I, §120, Nov. 6, 1978, 92 Stat. 2700; Pub. L. 100-17, title I, §120(a), (b), Apr. 2, 1987, 101 Stat. 157, 158; Pub. L. 100-202, §101(f) [title III, §347(d)], Dec. 22, 1987, 101 Stat. 1329-358, 1329-388; Pub. L. 100-457, title III, §§326, 335, Sept. 30, 1988, 102 Stat. 2150, 2153; Pub. L. 102-240, title I, §1012(a), (c), Dec. 18, 1991, 105 Stat. 1936, 1938; Pub. L. 102-388, title IV, §410, Oct. 6, 1992, 106 Stat. 1565; Pub. L. 104-59, title III, §313(a)-(c), Nov. 28, 1995, 109 Stat. 585, 586.)

## REFERENCES IN TEXT

The date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(1)(B), is the date of enactment of Pub. L. 102-240, which was approved Dec. 18, 1991.

For the effective date of title I of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(6), see section 1100 of Pub. L. 102-240, set out as an Effective Date of 1991 Amendment note under section 104 of this title.

## AMENDMENTS

1995—Subsec. (a)(5). Pub. L. 104-59, §313(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

<sup>2</sup> So in original. Probably should be "the States".

“(5) LIMITATION ON FEDERAL SHARE.—Except as otherwise provided in this paragraph, the Federal share payable for construction of a highway, bridge, tunnel, or approach thereto or conversion of a highway, bridge, or tunnel to a toll facility under this subsection shall be such percentage as the State determines but not to exceed 50 percent. The Federal share payable for construction of a new bridge, tunnel, or approach thereto or for reconstruction or replacement of a bridge, tunnel, or approach thereto shall be such percentage as the Secretary determines but not to exceed 80 percent. In the case of a toll facility subject to an agreement under section 119 or 129, the Federal share payable on any project for resurfacing, restoring, rehabilitating, or reconstructing such facility shall be 80 percent until the scheduled expiration of such agreement (as in effect on the day before the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991).”

Subsec. (a)(7). Pub. L. 104-59, §313(b), amended par. (7) generally. Prior to amendment, par. (7) read as follows:

“(7) LOANS.—A State may loan all or part of the Federal share of a toll project under this section to a public or private agency constructing a toll facility. Such loan may be made only after all Federal environmental requirements have been complied with and permits obtained. The amount loaned shall be subordinated to other debt financing for the facility except for loans made by the State or any other public agency to the agency constructing the facility. Funds loaned pursuant to this section may be obligated for projects eligible under this section. The repayment of any such loan shall commence not more than 5 years after the facility has opened to traffic. Any such loan shall bear interest at the average rate the State’s pooled investment fund earned in the 52 weeks preceding the start of repayment. The term of any such loan shall not exceed 30 years from the time the loan was obligated. Amounts repaid to a State from any loan made under this section may be obligated for any purpose for which the loaned funds were available. The Secretary shall establish procedures and guidelines for making such loans.”

Subsec. (c)(5). Pub. L. 104-59, §313(c), inserted before period at end of first sentence “or between a point in a State and a point in the Dominion of Canada” and in second sentence substituted “Hawaii,” for “Hawaii and” and inserted “, operations between a point in a State and a point in the Dominion of Canada,” after “Puerto Rico”.

1992—Subsec. (b). Pub. L. 102-388, §410(1), which directed the substitution of “classified as a public road” for “approved under section 103(b) or (b) of this title as a part of one of the Federal-aid systems”, was executed by making the substitution for “approved under section 103(b) or (c) of this title as a part of one of the Federal-aid systems” to reflect the probable intent of Congress.

Subsec. (c)(2). Pub. L. 102-388, §410(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The operation of the ferry shall be on a route which has been approved under section 103(b) or (c) of this title as a part of one of the Federal-aid systems within the State and has not been designated as a route on the Interstate System.”

1991—Subsec. (a). Pub. L. 102-240, §1012(a), amended subsec. (a) generally, substituting present provisions for provisions authorizing Federal participation in construction or acquisition of toll bridges, tunnels and approaches, provided that facility was publicly owned and operated by State or public authority, and State or authority agreed that all tolls, less those used to offset cost of operation and maintenance, were to be applied to repayment of State or authority for cost of construction or acquisition, that no tolls were to be charged after such repayment, and that facility was to be free of charge thereafter, except in case of bridge connecting United States with foreign country.

Subsec. (b). Pub. L. 102-240, §1012(c)(1), (2), redesignated subsec. (f) as (b) and struck out former subsec. (b) which authorized Secretary to approve toll roads, bridges and tunnels as part of Interstate System, au-

thorized expenditure of Federal-aid highway funds on toll roads after they became toll-free, and required agreements between Secretary and State highway departments on construction of Interstate projects to forbid construction of toll roads, but not toll bridges and tunnels, on interstate highway route without official concurrence of Secretary, after June 30, 1968.

Subsec. (c). Pub. L. 102-240, §1012(c), redesignated subsec. (g) as (c), inserted “and ferry terminal facilities” after “boats” in introductory provisions, added par. (3) and struck out former par. (3) which read as follows: “Such ferry shall be publicly owned and operated.”, in par. (4), inserted “or other public entity” after “State” and “, debt service, negotiated management fees, and, in the case of a privately operated toll ferry, for a reasonable rate of return” before period at end, and struck out former subsec. (c) which made available funds authorized for expenditure on Federal-aid highway systems for projects approaching toll roads, bridges or tunnels up to point where project had use irrespective of use for toll road, bridge or tunnel.

Subsec. (d). Pub. L. 102-240, §1012(c)(1), (2), redesignated subsec. (j) as (d) and struck out former subsec. (d) which made available funds authorized for expenditure on Interstate System for Interstate System projects approaching toll road and having no other use, if agreement was reached that section of toll road would become free to public upon collection of tolls sufficient to liquidate cost of road and outstanding bonds and cost of maintenance, operation and debt service during period of toll collection, and that there was a reasonably satisfactory alternative free route available to bypass toll section.

Subsec. (e). Pub. L. 102-240, §1012(c)(1), struck out subsec. (e) which authorized Secretary to permit Federal participation in reconstruction and improvement of two-lane toll road designated as part of the Interstate System before June 30, 1973, as necessary to bring such road to standards of Interstate System, provided that toll road authority agreed that no new indebtedness to be liquidated by tolls was to be incurred, that all tolls be used for operation and maintenance and to repay outstanding bonds, and that, upon liquidation of such bonds, the road was to become free to public.

Subsecs. (f), (g). Pub. L. 102-240, §1012(c)(2), redesignated subsecs. (f) and (g) as (b) and (c), respectively.

Subsec. (h). Pub. L. 102-240, §1012(c)(1), struck out subsec. (h) which provided that, in case of interstate toll bridge on Federal-aid primary system, except Interstate System, owned by State or political subdivision, that became toll-free by Jan. 1, 1975, because of purchase or construction by State before Jan. 1, 1975, funds would be made available under section 104(b)(1) and (3) of this title to pay Federal share of lesser of value of bridge (after deducting portion of value already attributable to Federal funds) or amount by which principal amount of outstanding unpaid bonds issued for construction or acquisition of bridge exceeded amount accumulated for their amortization, on date bridge became free to public.

Subsec. (i). Pub. L. 102-240, §1012(c)(1), struck out subsec. (i) which authorized Secretary to permit Federal participation, through funds for Federal-aid highway system, other than Interstate System, in engineering and fiscal assessments, traffic analyses, network studies, etc., to determine whether privately owned toll bridges should be acquired by a State or subdivision.

Subsec. (j). Pub. L. 102-240, §1012(c)(2), redesignated subsec. (j) as (d).

Subsec. (k). Pub. L. 102-240, §1012(c)(1), struck out subsec. (k) which required operators of toll roads, tunnels, ferries and bridges on Federal-aid highway system to biennially certify to Governor of State that facilities were adequately maintained and that operator had ability to fund such facilities that were not adequately maintained without using Federal-aid highway funds, and which required Governor of each State to report biennially to Secretary on facilities required to so certify.

1988—Subsec. (j)(1), (3). Pub. L. 100-457, §335, amended Pub. L. 100-202, §101(l) [title III, §347(d)(1), (2)(A), (C)], see 1987 Amendment note below.

Subsec. (j)(6). Pub. L. 100-457, §326(1), inserted “(and, in the case of the State of Texas, the Texas Turnpike Authority)” after “State highway department”.

Subsec. (j)(10). Pub. L. 100-457, §326(2), added par. (10).  
1987—Subsec. (j). Pub. L. 100-17, §120(a), added subsec. (j).

Subsec. (j)(1). Pub. L. 100-202, §101(l) [title III, §347(d)(1)], as amended by Pub. L. 100-457, §335, which directed the amendment of par. (1) by substituting “(9)” for “(9)” was executed by substituting “9” for “7” as the probable intent of Congress.

Subsec. (j)(3). Pub. L. 100-202, §101(l) [title III, §347(d)(2)(A)], as amended by Pub. L. 100-457, §335, which directed the amendment of par. (3) by substituting “(9)” for “(7)” was executed by substituting “9” for “7” as the probable intent of Congress.

Pub. L. 100-202, §101(l) [title III, §347(d)(2)(B)–(D)], as amended by Pub. L. 100-457, §335, substituted “States of Pennsylvania and West Virginia” for “State of Pennsylvania” in two places and inserted “State of Georgia and West Virginia,” and “The toll facility in Orange County, California, may be located in more than 1 highway corridor to relieve congestion on existing interstate routes in such County.”

Subsec. (k). Pub. L. 100-17, §120(b), added subsec. (k).  
1978—Subsec. (i). Pub. L. 95-599 added subsec. (i).

1976—Subsec. (g)(5). Pub. L. 94-280 authorized ferry operations within the islands which comprise the Commonwealth of Puerto Rico and excepted ferry operations between the islands which comprise the Commonwealth of Puerto Rico from the prohibition of ferry operations in foreign or international waters.

1975—Subsec. (g)(5). Pub. L. 93-643 substituted “operations between the islands which comprise the State of Hawaii and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada” for “operations between the islands which comprise the State of Hawaii and operations between the States of Alaska and Washington, or between any two points within the State of Alaska”.

1973—Subsec. (b). Pub. L. 93-87, §118(a), inserted third sentence providing that when any toll road which the Secretary has approved as a part of the Interstate System is made a toll-free facility, Federal-aid highway funds apportioned under section 104(b)(5) of this title may be expended for the construction, reconstruction, or improvement of that road to meet the standards adopted for the improvement of projects located on the Interstate System.

Subsec. (e). Pub. L. 93-87, §118(b), struck from first sentence “on the date of enactment of this subsection” before “as he may find necessary” and substituted in third sentence “1973” for “1968”.

Subsecs. (f), (g). Pub. L. 93-87, §139, redesignated the second subsec. (f) as (g) and in par. (5) substituted “may be operated” for “shall be operated”, inserted “(including the islands which comprise the State of Hawaii)” after “within the State”, and excepted operations between the islands which comprise the State of Hawaii and operations between the States of Alaska and Washington, or between any two points within the State of Alaska from the prohibition against ferry operations in foreign or international waters.

Subsec. (h). Pub. L. 93-87, §132, added subsec. (h).  
1972—Subsec. (a)(3). Pub. L. 92-434 substituted “or” for “and” making text read “maintained or operated”, and required domestic and foreign tolls for international bridges, and that the tolls be limited to amount necessary for maintenance, repair, and operation thereof.

1970—Subsec. (e). Pub. L. 91-605, §133, added subsec. (e). Former subsec. (e), pertaining to ferry approaches, redesignated (f).

Subsec. (f). Pub. L. 91-605, §§133, 139, redesignated subsec. (e), relating to ferry approaches, as (f) and added a second subsec. (f) relating to ferry boats.

1968—Subsec. (b). Pub. L. 90-495 required that, after June 30, 1968, as a condition for the addition of toll highway facilities on the Interstate System, the ap-

proval of the Secretary is required, with an affirmative finding that the construction of the road as a toll facility rather than a toll-free facility is in the public interest, but with such limitation on the construction of toll facilities not to extend to toll bridges and tunnels.  
1960—Pub. L. 86-657, §5(b), included ferries in section catchline.

Subsec. (c). Pub. L. 86-657, §8(a), struck out “under prior Acts” after “Funds authorized”.

Subsec. (e). Pub. L. 86-657, §5(a), added subsec. (e).

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### CONTINUATION OF EXISTING AGREEMENTS

Section 1012(d) of title I of Pub. L. 102-240 provided that: “Unless modified under section 129(a)(6) of such title [this title], as amended by subsection (a) of this section, agreements entered into under section 119(e) or 129 of such title before the effective date of this title [Dec. 18, 1991] and in effect on the day before such effective date shall continue in effect on and after such effective date in accordance with the provisions of such agreement and such section 119(e) or 129.”

#### CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES

Section 1064 of Pub. L. 102-240, as amended by Pub. L. 102-388, title III, §332, Oct. 6, 1992, 106 Stat. 1550, provided that:

“(a) IN GENERAL.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c) of title 23, United States Code.

“(b) FEDERAL SHARE.—The Federal share payable for construction of ferry boats and ferry terminal facilities under this section shall be 80 percent of the cost thereof.

“(c) FUNDING.—There shall be available, out of the Highway Trust Fund (other than the Mass Transit Account), to the Secretary for obligation at the discretion of the Secretary \$14,000,000 for fiscal year 1992, \$17,000,000 per fiscal year for each of fiscal years 1993, 1994, 1995, and 1996, and \$18,000,000 for fiscal year 1997 in carrying out this section. Such sums shall remain available until expended.

“(d) APPLICABILITY OF TITLE 23.—All provisions of chapter 1 of title 23, United States Code, that are applicable to the National Highway System, other than provisions relating to apportionment formula and Federal share, shall apply to funds made available to carry out this section, except as determined by the Secretary to be inconsistent with this section.

“(e) TREATMENT OF CERTAIN ROADS.—For purposes of this section, North Carolina State Routes 12, 45, 306, 615, and 168 and United States Route 421 in the State of North Carolina shall be treated as principal arterials. For further purposes of this section, the access road from Interstate Business Route 75 to the Sugar Island Ferry Service in Chippewa County, Michigan, and the access road from United States Route 31 to the Beaver Island Ferry Service in Charlevoix County, Michigan, shall be treated as principal arterials.”

#### STUDY TO DETERMINE EXTENT OF BONDED INDEBTEDNESS OF STATES FOR CONSTRUCTION OF TOLL ROADS INCORPORATED INTO INTERSTATE SYSTEM

Section 164 of Pub. L. 95-599, as amended by Pub. L. 96-106, §16, Nov. 19, 1979, 93 Stat. 798, directed Secretary

of Transportation to report not later than July 1, 1980, respecting extent of outstanding bonded indebtedness for each State as of Jan. 1, 1979, incurred by each State or public authority prior to June 29, 1956, for road construction or portions incorporated within Interstate System, and methods of allocating bonded indebtedness and removal of toll provisions.

#### RICHMOND-PETERSBURG TURNPIKE

Section 131 of Pub. L. 91-605 provided that: "The Secretary of Transportation is authorized to amend any agreement heretofore entered into under the provisions of section 129(d) of title 23, United States Code, in order to permit the continuation of tolls on the existing Richmond-Petersburg Turnpike to finance the construction within the existing termini of such turnpike of two lanes thereon in addition to the lanes in existence on the date of enactment of this section [Dec. 31, 1970] necessary to meet traffic and highway safety requirements. Any amended agreement entered into for such purposes shall provide assurances that the existing turnpike (including the additional lanes) shall become free to the public upon the collection of tolls sufficient to liquidate all construction costs, and the costs of maintenance, operation, and debt service during the period of toll collections to liquidate such construction costs, but in no event shall tolls be collected after date of maturity of those bonds outstanding on the date of enactment of this section [Dec. 31, 1970] issued for construction of such turnpike having the latest maturity date."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 124, 148, 301 of this title; title 33 section 535f.

### § 130. Railway-highway crossings

(a) Except as provided in subsection (d)<sup>1</sup> of section 120 of this title and subsection (b) of this section, the entire cost of construction of projects for the elimination of hazards of railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings, may be paid from sums apportioned in accordance with section 104 of this title. In any case when the elimination of the hazards of a railway-highway crossing can be effected by the relocation of a portion of a railway at a cost estimated by the Secretary to be less than the cost of such elimination by one of the methods mentioned in the first sentence of this section, then the entire cost of such relocation project, except as provided in subsection (d)<sup>1</sup> of section 120 of this title and subsection (b) of this section, may be paid from sums apportioned in accordance with section 104 of this title.

(b) The Secretary may classify the various types of projects involved in the elimination of hazards of railway-highway crossings, and may set for each such classification a percentage of the costs of construction which shall be deemed to represent the net benefit to the railroad or railroads for the purpose of determining the railroad's share of the cost of construction. The percentage so determined shall in no case exceed 10 per centum. The Secretary shall determine the appropriate classification of each project.

(c) Any railroad involved in a project for the elimination of hazards of railway-highway cross-

ings paid for in whole or in part from sums made available for expenditure under this title, or prior Acts, shall be liable to the United States for the net benefit to the railroad determined under the classification of such project made pursuant to subsection (b) of this section. Such liability to the United States may be discharged by direct payment to the State highway department of the State in which the project is located, in which case such payment shall be credited to the cost of the project. Such payment may consist in whole or in part of materials and labor furnished by the railroad in connection with the construction of such project. If any such railroad fails to discharge such liability within a six-month period after completion of the project, it shall be liable to the United States for its share of the cost, and the Secretary shall request the Attorney General to institute proceedings against such railroad for the recovery of the amount for which it is liable under this subsection. The Attorney General is authorized to bring such proceedings on behalf of the United States, in the appropriate district court of the United States, and the United States shall be entitled in such proceedings to recover such sums as it is considered and adjudged by the court that such railroad is liable for in the premises. Any amounts recovered by the United States under this subsection shall be credited to miscellaneous receipts.

(d) SURVEY AND SCHEDULE OF PROJECTS.—Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railway-highway crossings.

(e) FUNDS FOR PROTECTIVE DEVICES.—At least ½ of the funds authorized for and expended under this section shall be available for the installation of protective devices at railway-highway crossings. Sums authorized to be appropriated to carry out this section shall be available for obligation in the same manner as funds apportioned under section 104(b)(1) of this title.

(f) APPORTIONMENT.—Twenty-five percent of the funds authorized to be appropriated to carry out this section shall be apportioned to the States in the same manner as sums are apportioned under section 104(b)(2) of this title, 25 percent of such funds shall be apportioned to the States in the same manner as sums are apportioned under section 104(b)(6) of this title, and 50 percent of such funds shall be apportioned to the States in the ratio that total railway-highway crossings in each State bears to the total of such crossings in all States. The Federal share payable on account of any project financed with funds authorized to be appropriated to carry out this section shall be 90 percent of the cost thereof.

(g) ANNUAL REPORT.—Each State shall report to the Secretary not later than December 30 of each year on the progress being made to implement the railway-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the var-

<sup>1</sup> See References in Text note below.